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1 RECORD OF ORAL HEARING

2  
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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5  
6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES

8  
9  
10 Ex parte JOSEPH S. STAM, GREGORY A. MART, KEITH H. BERENDS,  
11 GREGORY S. BUSH, JOHN K. ROBERTS, MARK W. PIERCE, JON H.  
12 BECHTEL, ERIC J. WALSTRA, and BROCK R. RYCENGA

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15 Appeal 2008-2861  
16 Application 10/645,801  
17 Technology Center 2600

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19  
20 Oral Hearing Held: November 6, 2008

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23  
24 Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT, and KARL  
25 D. EASTHOM, Administrative Patent Judges

26  
27 ON BEHALF OF THE APPELLANTS:

28  
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34  
35 The above-entitled matter came on for hearing on Thursday,  
36 November 6, 2008, commencing at 9:00 a.m., at The U.S. Patent and  
37 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Timothy  
38 J. Atkinson, Jr.

1

2 MS. BEAN: Calendar Number 18. Mr. Schultz.

3 JUDGE EASTHOM: Okay. Thank you. Spell your last name S C H  
4 U L T Z?

5 MR. SCHULTZ: That's correct, sir.

6 JUDGE HAIRSTON: Okay, thank you.

7 MR. SCHULTZ: Thank you.

8 JUDGE HAIRSTON: You may begin.

9 MR. SCHULTZ: We all ready?

10 JUDGE HAIRSTON: Yes. I'm so sorry. Go ahead. You may begin.

11 MR. SCHULTZ: Well, good morning officially and thanks for all  
12 your time and attention to details we're about to talk about. Maybe his -- if  
13 you would bear with me just a moment, I can just start with a description of  
14 the product so that we actually will see then what the claim set is all about.

15 JUDGE HAIRSTON: Okay.

16 MR. SCHULTZ: Actually, I recognize a couple of you from past  
17 hearings that I participated in, so I'm glad to --

18 JUDGE SAADAT: Okay.

19 MR. SCHULTZ: On both sides, thanks. Anyway, this is primarily  
20 the business that Gentex is in, is the business of rearview mirrors for  
21 vehicles, at least that was the foundation of the business. And this particular  
22 version is an automatic dimming mirror. At nighttime when you have  
23 vehicles coming behind you with bright lights on, the mirror reflectivity  
24 decreases automatically.

25 JUDGE HAIRSTON: Does it move or -- does the mirror move at a  
26 different angle like the old manual ones or --

1           MR. SCHULTZ: Actually, what is in this mirror is an electrochromic  
2 chemistry device --

3           JUDGE HAIRSTON: So, it's -- okay --

4           MR. SCHULTZ: -- two pieces of glass with a electrochromic  
5 medium sandwiched between, and a voltage is applied that darkens their  
6 light -- or darkening -- or decreasing reflectivity.

7           JUDGE HAIRSTON: Got you.

8           MR. SCHULTZ: Generally, that's how Gentex got started in the  
9 business, and with that feature it brought a lot of electronics generally into  
10 the mirror; the OnStar© communication system for example, is a part of this  
11 mirror. And one of the features that we're here today to talk about is the  
12 forward-looking camera feature, and specifically with automatic control of  
13 high-beam headlights.

14           We have this camera that points out the front of the vehicle and is  
15 continuing -- continuously monitoring the scene to look for headlights of  
16 oncoming cars or taillights of preceding cars, at which point you would not  
17 want your high beams on.

18           JUDGE HAIRSTON: All of these new mirrors are making it hard to  
19 hang my parking sticker on the mirror. Go ahead, I'm sorry.

20           MR. SCHULTZ: Just like in the police vehicles, too, we have a  
21 camera that has it all recorded, that actually the hardware side of it -- quite  
22 straightforward. You have a CMOS image sensor in combination with a  
23 microprocessor that automatically then interfaces with the lighting system up  
24 on the car to make all of that happen.

25           One of the quite complex portions of that is actually picking out the  
26 individual light sources within the scene and deciding whether they're

1 taillights or headlights as opposed to reflections off of signs for example, or  
2 streetlights or lights on houses, a multitude of nonvehicular light sources that  
3 we call -- that, that we're trying to classify.

4 JUDGE HAIRSTON: Does it do it by lumens or --

5 MR. SCHULTZ: Well, quite complex actually -

6 JUDGE HAIRSTON: Because there are so many different headlights  
7 now so that --

8 MR. SCHULTZ: That's, that's really one of the core teachings of this  
9 particular patent we're here to talk about, is in the earlier versions of  
10 headlight control automatic high beam, they would have a single sensor and  
11 it would have no ability to distinguish special orientation of the light sources  
12 within the same, let alone a color of them. It was just purely based on  
13 brightness of light ambient within the scene.

14 Over the course of time, Gentex, along with some other competitors,  
15 has actually improved on the hardware side such that it is an image sensor  
16 now that's looking out the front. So not only can you see spatially where the  
17 light sources are at, you actually can detect to some degree the color of the  
18 light sources. Thereby, you gain a lot of information as opposed to just a  
19 single sensor looking for the general ambient light level at the scene.

20 JUDGE HAIRSTON: Okay.

21 MR. SCHULTZ: So one of the areas that is critical in all of this once  
22 you have the information available, the data from the image sensor, is the  
23 algorithms that run in the microprocessor, which we will see recited in the  
24 claims quite regularly.

25 One option is to have a neural network, which neural networks have  
26 been around, mathematically speaking, more in the computation texts for

1 long, long time. Two of the references that the Examiner has relied upon for  
2 rejecting these claims, first and foremost, the Breed Patent. It incorporates a  
3 reference within a Gorman article, and the Examiner refers to the  
4 combination of Breed with that reference incorporated as teaching neural  
5 networks, or at least enabling one of ordinary skill in the art to combine that  
6 with the teachings of say, Stam, which we are very familiar with as  
7 commonly assigned patent and thereby you would come to our invention.

8 The Breed patent does not actually anywhere in the patent, and as  
9 we've pointed out in the Appeal Brief and any correspondence subsequent to  
10 that, teach neural networks at all.

11 JUDGE EASTHOM: Counsel, what about Column 20, Lines 16 to  
12 18? I'll read it while you're looking at it. It says "Once again the key to this  
13 technology is the use of trained pattern recognition algorithms and  
14 particularly of the artificial neural network." And that's for his lighting  
15 dimming system which looks very much to me like yours. It uses a red  
16 filter. It discriminates between taillights and headlights and then it dims  
17 based on those discriminations.

18 MR. SCHULTZ: And that is generally true to all automatic high-  
19 beam control systems. They are attempting in some regard to distinguish  
20 light sources in the scene from those ones that you would want to dim the  
21 headlights from those in the scene that you would not want to dim. So yes,  
22 indeed, that is true, that even within Breed they are in a very bare bones  
23 context talking about sensing light sources in the scene and actually do talk  
24 about controlling the neural network or a trained pattern recognition.

25 The, the odd part is that it's two-fold. One is, again, they only in  
26 Breed incorporate the Gorman article by reference. They do not actually, for

1 example, in any of the passages even, you know, Column 20 suggest that  
2 you would have certain inputs into the neural network; for example, the  
3 position of the light source, the color of the light source, the length of time it  
4 takes to move across the scene. All those variables that you would -- that we  
5 actually teach as inputs to the neural network, there is no place within Breed  
6 that would even suggest one input into the neural network.

7 JUDGE EASTHOM: Well, that's -- but that's -- there's nothing like  
8 that claimed in Claim 1, is there?

9 MR. SCHULTZ: Well, actually, I just want to start with describing  
10 how void Breed is of any actual teaching of the use of a neural network to  
11 control a headlight.

12 JUDGE EASTHOM: Well, we just established that it does teach that,  
13 I thought.

14 MR. SCHULTZ: Well, actually, I'm pointing to the fact that it only  
15 mentions it in passing, and it only teaches it to the, to the constraint that they  
16 incorporate Gorman. Gorman is not an article at all about neural networks.

17 JUDGE EASTHOM: Wait, wait. I, I don't understand what your  
18 argument is that it's in the context of Gorman and I think it's in the context  
19 of neural networks in general, and you've just told me that neural networks  
20 are old in art.

21 MR. SCHULTZ: That's, that's true. Let, let me --

22 JUDGE EASTHOM: Okay.

23 MR. SCHULTZ: -- maybe -- if, if you would like I can jump to one  
24 of the claims; for example -- and I can point --

25 JUDGE EASTHOM: You are only arguing about Claim 1 from your  
26 Brief?

1 MR. SCHULTZ: Well, we can certainly start with Claim 1 and many  
2 other arguments around. Take, for example, Claim 1. You get clear to the --  
3 Claim 1 -- it actually does not rely upon the, the neural network. It, it  
4 doesn't actually cite that at all -- recite that at all.

5 JUDGE EASTHOM: Right. It just says classification network.

6 MR. SCHULTZ: Right.

7 JUDGE EASTHOM: Trains --

8 MR. SCHULTZ: Totally different than a neural network.

9 JUDGE EASTHOM: Expert knowledge, I thought, was in your spec  
10 related to neural networks.

11 MR. SCHULTZ: Well, expert knowledge is like empirical data.  
12 Expert knowledge is like when you would drive the vehicle with our system  
13 in it you would actually identify where it had missed -- malperformed, for  
14 example. That's expert knowledge as we've defined it in our specification.

15 JUDGE EASTHOM: Well, don't you train the network using that  
16 expert knowledge? That's what your claim says, trained using light sources,  
17 classified using expert knowledge.

18 MR. SCHULTZ: That's correct. Expert knowledge is the person --

19 JUDGE EASTHOM: Well, that's training. Isn't that a neural  
20 network? I, I mean if you're gong to say your claim doesn't require neural  
21 network, I don't understand why we're arguing then Gorman doesn't teach  
22 neural networks.

23 MR. SCHULTZ: Well, in the context of Claim 1 it only actually  
24 applies tangentially at best. There's another claim that we actually recite  
25 neural network per se, Claim 4 for example.



1 JUDGE EASTHOM: Maybe we should just start with what is  
2 missing in Claim 1 from the Breed reference. Maybe we could just simplify.

3 MR. SCHULTZ: Well, actually, in, in Claim 1 with -- without doubt,  
4 very simplistically speaking, we recite explicitly a first algorithm and a  
5 second algorithm. No place in any of the references there are two  
6 algorithms described, and it's a quite important distinction that the Examiner  
7 did not grasp a hold of.

8 JUDGE EASTHOM: Counsel, did you argue that in your Brief on, on  
9 --

10 MR. SCHULTZ: Yes, certainly did. On Page 19, you know, for  
11 certain in that that's the reference that the Examiner relies upon for rejecting  
12 that particular claim.

13 In all the contexts on Page 19, what the Examiner does point out is -- relies  
14 on neural networks and that's what I guess I'm trying to say, is that in Claim  
15 1 that is only tangentially related at best. There -- the Examiner hadn't even  
16 pointed to or alleged that Breed teaches a first and a second algorithm.

17 JUDGE EASTHOM: I don't see you arguing that in your Brief there.

18 MR. SCHULTZ: Actually, the last paragraph is --

19 JUDGE EASTHOM: Well, you repeated the claim for sure.

20 MR. SCHULTZ: Certainly that is the, the primary purpose as the  
21 Examiner rejected upon -- based upon Breed. So I'm trying to describe in a  
22 general context why Breed itself does not even apply because it does not  
23 teach any detail whatsoever about any of the claim language in Claim 1  
24 because neural networks aren't even recited in Claim 1. So really the Breed  
25 reference is not even applicable whatsoever to Claim 1; however, that was  
26 the Examiner's rejection so we have to address it.

1 JUDGE EASTHOM: Okay.

2 JUDGE SAADAT: In the sense of the two algorithms, what is the  
3 function of the first algorithm in your claim?

4 MR. SCHULTZ: Well, as -- the --

5 JUDGE SAADAT: That Breed doesn't --

6 MR. SCHULTZ: As described in -- throughout the specification, we  
7 actually have a series of four algorithms that work in concert with one  
8 another, and in Claim 1 we're only reciting the first and the second one  
9 because, for example, the first one would be classifying the light sources in  
10 the scene. The second algorithm would then maybe actually do something  
11 with the headlights. For example, if the classification algorithm ran the  
12 algorithm and described -- and came to the conclusion that there were three  
13 light sources in the scene, one of them at certain position and another one  
14 that was at another and classified them --

15 JUDGE SAADAT: That's the disclosed function, but in the claim --

16 MR. SCHULTZ: That's the first algorithm.

17 JUDGE SAADAT: -- you require, you require a first algorithm  
18 which again is only required in the claim to include or comprise at least a  
19 second algorithm, so -- and then --

20 MR. SCHULTZ: That's correct.

21 JUDGE SAADAT: -- the second algorithm would have certain  
22 functions that are listed in the claim.

23 MR. SCHULTZ: And, and that's what I'm saying, is that there isn't  
24 any of the references that have that -- it's just purely jumping to the decision  
25 state. They do not have two algorithms that they describe anywhere in  
26 Breed or any of the other references for that matter.

1 JUDGE EASTHOM: Well, it says there's trained pattern algorithms;  
2 that's a plural.

3 MR. SCHULTZ: What would the second one be?

4 JUDGE EASTHOM: One of the two, one of the two, plural.

5 MR. SCHULTZ: And, and then there's further limitations. Actually,  
6 as recited in the claim, we have the fact that we have a first algorithm  
7 comprising at least the second algorithm and then the, you know, second  
8 algorithm is selected from a specific group of things that further aren't  
9 taught in Breed at all. I guess that's what I'm saying. Just generally  
10 speaking, yes, that is true. Breed talks about the general concept of trained  
11 pattern recognition and neural networks; however, it never mentions that an  
12 on-state to off-state transition state algorithm.

13 JUDGE EASTHOM: Well, it does because it, it dims the light.

14 MR. SCHULTZ: Well, playing our, you know, our own  
15 lexicographer to an extent that the transition state algorithm is a truly hyper  
16 defined term. We'll find in another claim we talk about we recite that the  
17 output of the neural network is three or more states. One of those states is a  
18 transition state. It's not the off-state or the on-state. It's a third state and  
19 that is another fundamental misunderstanding I think in the overall rejection.

20 Just like as in Claim 1, we're talking about specific things that we  
21 have found to be advantageous and none of the references have actually  
22 recognized the shortcoming let alone offered solutions. And in this claim  
23 truly the second algorithm selected from an on-state off-state transition  
24 that's not been Breed. And then an on -- an off-state to an on-state  
25 transition. That's not in Breed; either one.

26 JUDGE EASTHOM: You only need one of those in your claim.

1 MR. SCHULTZ: That's why I'm saying neither one of them is in  
2 there.

3 JUDGE EASTHOM: Why, why isn't dimming something an on to an  
4 off or an off to an on?

5 MR. SCHULTZ: That's, that's what I'm saying. In Breed it only  
6 teaches going off to on or on to off. In our claim we're reciting --

7 JUDGE EASTHOM: Why isn't that -- I don't understand why that's  
8 not an on-state transition, or an off-state transition.

9 MR. SCHULTZ: As in our claim -- in, in our specification we  
10 actually define that to mean that there are other things happening during that  
11 transition period. Actually assuring -- it's all based upon probabilities and  
12 the fact that all of our claims talk about either three states or in this context  
13 an off state transition state. Truly the state of the headlights do not, do not  
14 change at all during that transition state. It's only moving closer -- say if  
15 they're on --

16 JUDGE EASTHOM: Well, they don't turn off instantaneously, right?

17 MR. SCHULTZ: Well, what I'm saying is in our specification --

18 JUDGE EASTHOM: No, in Breed they don't turn off  
19 instantaneously. I mean the energy has to dissipate.

20 MR. SCHULTZ: Well, there is no transition state, though.

21 JUDGE EASTHOM: The, the, the light --

22 MR. SCHULTZ: Purposeful transition state.

23 JUDGE EASTHOM: The light --

24 MR. SCHULTZ: When the algorithm gets to the point it's decided to  
25 move it from on to off or off to on; it is -- there is no transition state that  
26 would look further frames to see if the decisions that were going to be

1 imposed actually want to. Here's one example that we teach in our  
2 specification; say that you're actually coming down the road and you, you  
3 have in one analysis of an image you've decided that it's like fifty percent  
4 probable that one of the light sources is a headlight. You do not want to dim  
5 your own high-beams at that point because it's only fifty percent probable  
6 that one light source.

7       So what we teach is actually analyzing another image during a  
8 transition state that you would further refine the decision from fifty percent  
9 probability you might either come that it's less likely or more likely. So  
10 you're transitioning inching closer toward turning them off if they're on or  
11 on if they're off, but you're not actually doing either; turning them off --  
12 turning them on. You're truly in a transition state, and that is indeed the part  
13 that's missing in Breed or any of the other references; even our own as we  
14 would actually make the decision turn from on to off or off to on whereas  
15 with this improvement the period of time you actually have like hysteresis, if  
16 you know what I mean.

17       JUDGE EASTHOM: I know what hysteresis is.

18       MR. SCHULTZ: They might turn on when something is real dark  
19 and they won't immediately turn back on or off if it -- you pass a street light.  
20 You have to, you know, fairly big gap, so same thing here; on state,  
21 transition state, off state transition states are different in and of themselves.  
22 So that would be Claim 1. Definitely none of that is taught in Breed at all.

23       JUDGE SAADAT: So you're suggesting that dimming recognition in  
24 Breed is different from on state to off state transition state --

25       MR. SCHULTZ: I'm suggesting even in Breed, they'll either turn off  
26 if they're on or they'll turn on if they're off. They don't have -- they do not

1 teach a transition state where you're truly as in a histeresis loop or a, you  
2 know, just an assurance an averaging type of a phenomenon.

3 JUDGE EASTHOM: Let me ask you this: In other words, you're  
4 saying that on state to off state transition state algorithm means you're  
5 making a decision?

6 MR. SCHULTZ: It, it means just like the example I gave, you're not  
7 actually changing the state of the -- your own headlights.

8 JUDGE EASTHOM: Oh, you're just -- you're deciding whether  
9 you're going to.

10 MR. SCHULTZ: It's a transition state truly.

11 JUDGE EASTHOM: Doesn't Breed have to decide whether or not to  
12 do it depending on what it is?

13 MR. SCHULTZ: That's what I'm saying. They do not truly have  
14 what we define as a transition state. They do not verify. They do not even  
15 teach a probability. They don't teach more than two states. It's either on or  
16 it's off, period. Many of our other claims as we'll get to --

17 JUDGE EASTHOM: Well, I don't think you're arguing that you're  
18 going to go from off to on. You're saying you're making a decision whether  
19 to from off to on. That's your transition.

20 MR. SCHULTZ: We're actually verifying over a long period of time  
21 a transition state, truly. What we define as a transition state we're actually  
22 rechecking the decision that would have automatically happened depending  
23 on a, as we recite in the claims, a multitude of different variables.

24 JUDGE EASTHOM: Well, what about, you know, Breed says he  
25 wants to distinguish between signs? So isn't he making a decision there  
26 whether or not to dim?

1 MR. SCHULTZ: True, but he doesn't actually describe a transition  
2 state where he'll actually analyze one frame and it has 50 percent  
3 probability, for example. He'll analyze another frame before he actually has  
4 something happen.

5 JUDGE EASTHOM: Right, but he'll, he'll determine whether or not  
6 there's a reflection or it's a headlight, correct?

7 MR. SCHULTZ: And that would be something other than a transition  
8 state that we're claiming.

9 JUDGE EASTHOM: That's your argument? Okay.

10 MR. SCHULTZ: That we're claiming here, exactly right. Yeah, it is,  
11 it is interesting that you can read this and overlook the transition state, and  
12 we truly -- in other claims we'll, we'll see that we have --

13 JUDGE EASTHOM: Well, I have to be honest; I don't see the  
14 distinction between transition states where you decide whether it's a sign  
15 and a light or whether you assign a probability because a probability isn't in  
16 your claim. In other words, you're going to have to make a decision and it's  
17 going to take time.

18 MR. SCHULTZ: Well, first -- the first claim does not have  
19 probability in it. We rely on the fact that we're reciting an on state -- let me  
20 say this first -- off state transition state algorithm or an off state to on state  
21 transition algorithm. Those are the two things that are missing here in  
22 Breed. They, they do not actually -- so that's just with Claim 1.

23 Claim 40 is the next one under that particular rejection just on Breed.  
24 That is highly focused specifically on the, the on state to off state transition  
25 algorithm or the off state to on state transition algorithm. Those are truly the  
26 only limitations in Claim 40.

1           Claim 44 -- here is comes in the language which of the wherein set out  
2 comprises at least three states. That is again it can either be an on state.  
3 This is explicitly described in the specification; point to it elsewhere. It can  
4 be either an on state, one of the two transition states either on to off state  
5 transition state or off to on whichever, and then the off. So you really -- we  
6 describe several more states, but at least three is what we're saying here to  
7 distinguish Breed and others that simply have an on or off. That's the  
8 meaning about having an output comprises it at least three states.

9           JUDGE EASTHOM: Claim 44?

10          MR. SCHULTZ: That's correct. So what's interesting with those  
11 three claims you see the first two ferrets out the fact that we have those  
12 transition states that we rely upon elsewhere to reflect additional states  
13 beyond on and off.

14          Claim 47 -- that this is more the empirical data that wherein the  
15 classification network determines the type of light source detected based  
16 upon at least one characteristic of at least one previously classified light  
17 source. That's even a further refinement of the transition state. That's one  
18 of the things that goes on. As I described a moment ago, we're not just  
19 looking at one image and deciding whether to turn on or off. We're actually  
20 having a transition state where we're looking at more than one frame. So  
21 that's brought out a little more direct in Claim 47 for example.

22          Claim 50 -- the expert knowledge again that comes in from the fact  
23 that when we drive as we've described in the specification, one of the main  
24 factors here respective of what type of algorithm you use you want to know  
25 when the system acted inappropriately. So we do test drives in the evening  
26 and we actually have the expert knowledge that we know when the system



1 malfunctions, so then we can go back and attempt to identify why did it  
2 misclassify a light source or were there two light sources and it confused one  
3 of the two. Expert knowledge is what we mean in this claim, that we  
4 actually fine tune the algorithm via that empirical data that we've -- that  
5 would be Claim 50.

6 Still highly focused on the transition state, these claims actually talk  
7 about, you know, what goes on during that period of time. In Claim 65, you  
8 go more to the heart of the neural network and we're talking about it  
9 comprising at least one waiting factor and that's established by statistical  
10 data. That seems to me what the Examiner is thinking that the Gorman  
11 reference teaches; that level of detail of a neural network. The Gorman  
12 reference again, as I was asserting a moment ago why I really like to focus  
13 on it is it truly never talks about waiting factors or any of the inputs that you  
14 would put into a neural network or whether you'd have one output state or  
15 three. Never once does Gorman even let alone Breed talk about that aspect  
16 of a neural network.

17 So for example, 65, the fact that we recite at least one waiting factor  
18 there are none of the references that teach using a neural network with any  
19 waiting factors let alone one. You know, just completely missing in the  
20 reference.

21 Sixty-nine -- he substantially continuous output value indicative of a  
22 probability. That again is a major oversight in either Breed or for that  
23 matter, the secondary reference Lee et al. Neither of them actually discuss  
24 having an output of a neural network that is a continuum. It's either a  
25 Boolean one or a zero is the outcome typically and what we have found is  
26 that it is most advantageous the way we use it to line up with a continuum so

1 that any one light source would have a probability between zero and a  
2 hundred of actually being one type or the other. It won't actually say it is or  
3 it isn't. It just -- and that again goes back to the transition state. All our  
4 competition they're either making a yes or a no decision. We've actually  
5 designed in our system a continuum probability such that the end result is  
6 more reliable.

7 So, you know, Claim 69 again it has the substantially continuous  
8 output that's completely missing. Claim 71 has the -- again the neural  
9 network -- the classification network with the statistical data weighting  
10 factor; again not in the prior art at all. So, you know, that's, that's the  
11 biggest picture that seems to be the Examiner on one context he was relying  
12 on two references; Breed with the incorporation of Gorman and Lee as  
13 teaching truly neural networks and all the things that would enable one of  
14 ordinary skill in the art to arrive at our invention.

15 And when in actuality neither Breed with Gorman included nor Lee  
16 teach neural networks per se. They're actually articles about some use of a  
17 neural network in themselves. They're not truly teaching neural networks.

18 JUDGE EASTHOM: Well, Breed, Breed teaches a neural network. I  
19 thought we --

20 MR. SCHULTZ: Well, again, just in passing says it could be used but  
21 again the detail then that we recite in our claims it does -- Breed nor  
22 Gorman, either one, have those individual elements that we recited in our  
23 claims.

24 JUDGE HAIRSTON: Counsel, counsel, I think we have the issue.  
25 We've far exceeded your 20 minutes. Can we get you to sum up in one  
26 minute?

1           MR. SCHULTZ: I can certainly sum up. And actually, that is a good  
2 summary because the, the bottom line is between that on the reference side  
3 the references just purely do not have what our claims recite. Second to that,  
4 the Examiner seemed to not be able to find certain language; Claim 41 for  
5 example, a Dependent Claim explicitly recites language that is within the  
6 specification and we point to the exact place. The words verbatim are there  
7 and the Examiner has stuck with the 1.75 rejection for example. And, and  
8 after interviewing the case and we actually looked at the paragraphs that that  
9 language is within, those, those are out there. So it seems to indicate to me  
10 there is some confusion still on the Examiner's understanding of the  
11 invention. So both on the references and our own disclosure, hopefully you  
12 will review on the merits and --

13           JUDGE HAIRSTON: Okay.

14           MR. SCHULTZ: -- move forward.

15           JUDGE EASTHOM: Thank you, counsel. Thank you.

16           MR. SCHULTZ: You have any questions or -- thank you very much.

17           JUDGE HAIRSTON: Thank you.

18           (Whereupon, the hearing concluded at 10:45 a.m. on November 6,  
19 2008.)